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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENIS KRIVOSHEENKO,

Plaintiff,

v.

LELAND BEAMER, MD; WARREN
ROBERTS, MD; JOSHUA YBARRA; and
STATE OF OREGON,,

Defendants.

Case No. 3:24-cv-01179

STATE DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES

Defendants answer Plaintiff's complaint as follows,

1.

Paragraph 1 contains a legal conclusion for which no response is required.

2.

Paragraph 2 contains a legal conclusion for which no response is required.

3.

Defendant admits that Plaintiff is currently incarcerated at Deer Ridge Correctional Institution. Defendants are without sufficient information to admit or deny whether he has been at DRCI during all relevant times.

4.

Defendant Beamer admits he is a medical provider at DRCI. To this extent this paragraph alleges anything further or different, Defendants deny the same.

5.

Defendant Roberts admits he is a medical doctor and director at ODOC. To this extent this paragraph alleges anything further or different, Defendants deny the same.

6.

Defendant Ybarra admits he is the grievance coordinator at DRCI. To this extent this paragraph alleges anything further or different, Defendants deny the same.

7.

Paragraph 7 contains a legal conclusion for which no response is required.

8.

Admit.

9.

Defendants admits plaintiff was diagnosed with Kienbock disease at some point. Defendants are without sufficient information to admit or deny the remaining allegations in paragraph 9.

10.

Defendants admit plaintiff entered ODOC on February 7, 2018. Defendants are without sufficient information to admit or deny the remaining allegations in paragraph 10.

11.

Defendants are without sufficient information to admit or deny the allegations in paragraph 11 and therefore deny the same.

12.

Defendants are without sufficient information to admit or deny the allegations in paragraph 12 and therefore deny the same.

13.

Defendants are without sufficient information to admit or deny the allegations in paragraph 13 and therefore deny the same.

14.

Defendants are without sufficient information to admit or deny the allegations in paragraph 14 and therefore deny the same.

15.

Defendants are without sufficient information to admit or deny the allegations in paragraph 15 and therefore deny the same.

16.

Defendants admit ODOC vaccinated adults in custody against COVID-19. Defendants are without sufficient information to admit or deny the remaining allegations in paragraph 16 and therefore deny the same.

17.

Defendants are without sufficient information to admit or deny the allegations in paragraph 17 and therefore deny the same.

18.

Defendants are without sufficient information to admit or deny the allegations in paragraph 18 and therefore deny the same.

19.

Defendants are without sufficient information to admit or deny the allegations in paragraph 19 and therefore deny the same.

20.

Defendants admits TLC is a committee within the ODOC medical system. Defendants admit Dr. Roberts is on the committee. Defendants are without sufficient information to admit or deny the allegations in paragraph 20 and therefore deny the same.

21.

Defendants are without sufficient information to admit or deny the allegations in paragraph 21 and therefore deny the same.

22.

Defendants are without sufficient information to admit or deny the allegations in paragraph 22 and therefore deny the same.

23.

Defendants are without sufficient information to admit or deny the allegations in paragraph 23 and therefore deny the same.

24.

Defendants are without sufficient information to admit or deny the allegations in paragraph 24 and therefore deny the same.

25.

Defendants deny it is common practice to have an individual with an injured wrist sleep on the top bunk as alleged. Defendants are without sufficient information to admit or deny the remaining allegations in paragraph 25 and therefore deny the same.

26.

Defendants are without sufficient information to admit or deny the allegations in paragraph 26 and therefore deny the same.

27.

Defendants are without sufficient information to admit or deny the allegations in paragraph 27 and therefore deny the same.

28.

Defendants are without sufficient information to admit or deny the allegations in paragraph 28 and therefore deny the same.

29.

Defendants are without sufficient information to admit or deny the allegations in paragraph 29 and therefore deny the same.

30.

Defendants are without sufficient information to admit or deny the allegations in paragraph 30 and therefore deny the same.

31.

Defendants are without sufficient information to admit or deny the allegations in paragraph 31 and therefore deny the same.

32.

Defendant admits plaintiff filed a habeas corpus action related to his medical care. Defendants are without sufficient information to admit or deny the allegations in paragraph 32 and therefore deny the same.

33.

Defendants are without sufficient information to admit or deny the allegations in paragraph 33 and therefore deny the same.

34.

Defendants are without sufficient information to admit or deny the allegations in paragraph 34 and therefore deny the same.

35.

Defendants are without sufficient information to admit or deny the allegations in paragraph 35 and therefore deny the same.

36.

Defendants admit plaintiff had hand surgery on July 21, 2022, while his habeas case was pending. To the extent this paragraph alleges anything further or different, Defendants deny the same.

37.

Denied.

38.

Defendants are without sufficient information to admit or deny the allegations in paragraph 38 and therefore deny the same.

39.

Denied.

40.

Defendants are without sufficient information to admit or deny the allegations in paragraph 40 and therefore deny the same.

41.

Defendants are without sufficient information to admit or deny the allegations in paragraph 41 and therefore deny the same.

42.

Defendants are without sufficient information to admit or deny the allegations in paragraph 42 and therefore deny the same.

43.

Defendants are without sufficient information to admit or deny the allegations in paragraph 43 and therefore deny the same.

44.

Defendants are without sufficient information to admit or deny the allegations in paragraph 44 and therefore deny the same.

45.

Defendants are without sufficient information to admit or deny the allegations in paragraph 45 and therefore deny the same.

46.

Defendants are without sufficient information to admit or deny the allegations in paragraph 46 and therefore deny the same.

47.

Defendants are without sufficient information to admit or deny the allegations in paragraph 47 and therefore deny the same.

48.

Defendants are without sufficient information to admit or deny the allegations in paragraph 48 and therefore deny the same.

49.

Defendants are without sufficient information to admit or deny the allegations in paragraph 49 and therefore deny the same.

50.

Defendants are without sufficient information to admit or deny the allegations in paragraph 50 and therefore deny the same.

51.

Defendants are without sufficient information to admit or deny the allegations in paragraph 51 and therefore deny the same.

52.

Defendants are without sufficient information to admit or deny the allegations in paragraph 52 and therefore deny the same.

53.

Defendants are without sufficient information to admit or deny the allegations in paragraph 53 and therefore deny the same.

54.

Defendants admit plaintiff's habeas case went to trial. Defendant denies the remaining allegations in paragraph 54.

55.

Denied.

56.

This paragraph does not contain any new or different allegations. To the extent this paragraph alleges anything further or different, Defendants deny the same.

57.

Denied.

58.

Denied.

59.

Denied.

60.

Denied.

61.

This paragraph does not contain any new or different allegations. To the extent this paragraph alleges anything further or different, Defendants deny the same.

62.

Denied.

63.

Denied.

64.

Denied.

65.

This paragraph does not contain any new or different allegations. To the extent this paragraph alleges anything further or different, Defendants deny the same.

66.

Denied.

67.

Denied.

68.

Denied.

69.

Denied.

70.

This answer is meant to be a complete and full denial of all claims. Defendants deny all plaintiff's allegations except those specifically admitted.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim under FRCP 12(b)(6))

71.

Plaintiff fails to state a claim upon which the Court can grant relief under one or more of the theories set forth in the Complaint.

SECOND AFFIRMATIVE DEFENSE

(Qualified Immunity)

72.

Defendants allege that at all times relevant to Plaintiff's Complaint they were acting in good faith and within their discretion pursuant to the laws and statutes of the State of Oregon and the United States, and that their conduct violated no clearly established statutory or constitutional right of which a reasonable official would have knowledge.

THIRD AFFIRMATIVE DEFENSE

(Prison Litigation Reform Act)

73.

Defendants incorporate herein the admissions, denials, and allegations set forth above. Defendants assert all provisions of the Prison Litigation Reform Act ("PLRA") to any of plaintiff's claims brought under 42 U.S.C. § 1983, including but not limited to, failure to exhaust administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

(ORS 30.650)

74.

Noneconomic damages may not be awarded to an adult in custody in an action against a public body unless the adult in custody has established that the adult in custody suffered economic damages.

FIFTH AFFIRMATIVE DEFENSE

(*Rooker Feldman* Doctrine)

75.

To the extent the plaintiff seeks to appeal any decision arising from his habeas corpus case, that claim may be barred by the *Rooker Feldman* doctrine, which prohibits federal courts from taking jurisdiction over an appeal from a state court decision.

SIXTH AFFIRMATIVE DEFENSE

((Oregon Tort Claims Act (“OTCA”))

76.

With respect to state or common law claims Plaintiff appears to be making, Answering Defendants assert all provisions of the Oregon Tort Claims Act (“OTCA”) to such claims, including, but not limited to, the provisions requiring timely and proper tort claim notice.

RESERVATION OF ADDITIONAL DEFENSES

77.

Defendants reserve the right to assert additional defenses as may become known to them through investigation and discovery.

WHEREFORE Defendants pray as follows: that Plaintiff be denied recovery, or the relief requested upon the claims set forth in the Complaint and that the Complaint be dismissed with prejudice in its entirety; that Defendants recover reasonable costs and attorneys' fees expended in defense of this matter; and that Defendants be granted such other and further relief as the Court deems just and reasonable.

DATED December 6, 2024.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Aaron D. Kelley
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Of Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on December 7, 2024, I served the foregoing DECLARATION OF AARON D. KELLEY IN SUPPORT OF STATE DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES upon the parties hereto by the method indicated below, and addressed to the following:

Lynn S. Walsh OSB# 94955
610 SW Alder St, Ste 415
Portland, OR 97205
Attorney for Plaintiff

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
☐ E-MAIL
☐ E-SERVE

s/ Aaron D. Kelley
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